IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DIETGOAL INNOVATIONS LLC Plaintiff, v. ARBY'S RESTAURANT GROUP, INC., ET AL Defendant	CASE NO. 2:11-CV-00418 **JURY TRIAL DEMANDED**

DEFENDANT CHICK-FIL-A, INC.'S ORIGINAL ANSWER AND COUNTERCLAIMS TO DIETGOAL INNOVATIONS LLC'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

NOW COMES CHICK-FIL-A, INC. ("Defendant") or ("Chick-fil-A"), one of the Defendants herein, and files this, its Original Answer and Counterclaims to DietGoal Innovations LLC's Second Amended Complaint for Patent Infringement, and with respect to same, Defendant would show as follows:

I.
DEFENDANT CHICK-FIL-A'S ORIGINAL ANSWER

Defendant's Answers To Plaintiff's Specific Allegations:

With regard to the specific allegations contained in Plaintiff's Second Amended Complaint in the numbered paragraphs and the Prayer for Relief, Chick-fil-A responds as follows (with the section and/or paragraph numbers corresponding to the numbered sections and/or paragraphs of the Complaint):

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Second Amended Complaint as

to the corporate nature of and/or the residency of the Plaintiff and therefore denies these allegations. To the extent any further response is required, these allegations are denied.

2. The allegations contained in paragraph 2 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

3. The allegations contained in paragraph 3 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

4. The allegations contained in paragraph 4 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

5. The allegations contained in paragraph 5 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

6. The allegations contained in paragraph 6 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

7. Chick-fil-A admits it is a privately held corporation organized and existing under the laws of the State of Georgia with its principal place of business located at 5200 Buffington Road, Atlanta, Georgia 30349. Chick-fil-A further admits it may be served with process through its registered agent for service of process CT Corporation, which, upon information and belief, has an office located at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Defendant denies any remaining allegations in this paragraph.

8. The allegations contained in paragraph 8 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

9. The allegations contained in paragraph 9 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

10. The allegations contained in paragraph 10 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

11. The allegations contained in paragraph 11 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

12. The allegations contained in paragraph 12 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

13. The allegations contained in paragraph 13 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

14. The allegations contained in paragraph 14 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

15. The allegations contained in paragraph 15 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

16. The allegations contained in paragraph 16 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

17. The allegations contained in paragraph 17 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

18. The allegations contained in paragraph 18 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

19. The allegations contained in paragraph 19 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

20. The allegations contained in paragraph 20 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

21. The allegations contained in paragraph 21 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

22. The allegations contained in paragraph 22 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

23. The allegations contained in paragraph 23 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

24. The allegations contained in paragraph 24 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

25. The allegations contained in paragraph 25 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

26. The allegations contained in paragraph 26 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

27. The allegations contained in paragraph 27 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

28. The allegations contained in paragraph 28 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

29. The allegations contained in paragraph 29 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

30. The allegations contained in paragraph 30 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

31. The allegations contained in paragraph 31 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

32. The allegations contained in paragraph 32 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

33. The allegations contained in paragraph 33 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

34. The allegations contained in paragraph 34 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

35. The allegations contained in paragraph 35 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

36. The allegations contained in paragraph 36 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

37. The allegations contained in paragraph 37 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

38. The allegations contained in paragraph 38 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

39. The allegations contained in paragraph 39 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

40. The allegations contained in paragraph 40 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

41. The allegations contained in paragraph 41 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

42. The allegations contained in paragraph 42 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

43. The allegations contained in paragraph 43 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

44. The allegations contained in paragraph 44 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

45. The allegations contained in paragraph 45 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

46. The allegations contained in paragraph 46 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

Defendant's Answers to Jurisdiction and Venue:

47. Chick-fil-A admits Plaintiff has filed this action as a patent infringement action arising under the U.S. patent laws, Title 35 of the United States Code as alleged in paragraph 47 of Plaintiff's Second Amended Complaint. Chick-fil-A denies there is any basis for any claim under the U.S. patent laws against Chick-fil-A and Chick-fil-A denies any remaining allegations contained in this paragraph.

48. Chick-fil-A admits this Court has subject matter jurisdiction over claims filed under the U.S. patent laws pursuant to Sections 1331 and 1338(a) of Title 28 U.S.C. as alleged in paragraph 48 of Plaintiff's Second Amended Complaint. Chick-fil-A denies any remaining allegations in this paragraph.

49. With regard to the allegations contained in paragraph 49 of Plaintiff's Second Amended Complaint, as they relate to Chick-fil-A, this Defendant admits it has designated an agent for service of process in the State of Texas, however, Chick-fil-A denies it is a resident of the State of Texas. Chick-fil-A further denies it has committed any acts of infringement in the State of Texas, or elsewhere. Chick-fil-A admits it has transacted business in the Eastern District of Texas, but denies this action arises out of or relates to any business contacts or activities of Chick-fil-A in the Eastern District of Texas, or elsewhere in Texas. To the extent the allegations contained in paragraph 49 of Plaintiff's Second Amended Complaint relate to the other Defendants, Chick-fil-A is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in this paragraph and therefore denies these allegations. Chick-fil-A denies any remaining allegations contained in this paragraph.

50. With regard to the allegations contained in paragraph 50 of Plaintiff's Second Amended Complaint, as they relate to Chick-fil-A, this Defendant admits it has transacted business in the Eastern District of Texas, but denies it committed and/or induced acts of patent infringement (whether direct, indirect, contributory, by inducement or through any other manner) in this district. Further, Chick-fil-A denies venue in this district is convenient to it, or that this venue is the most convenient for all of the parties and witnesses in this cause. Chick-fil-A further denies this venue best serves judicial economy and resources. Accordingly, Defendant reserves the right to seek and pursue a change of venue pursuant to 28 U.S.C. § 1404. To the extent the allegations contained in paragraph 50 of Plaintiff's Second Amended

Complaint relate to the other Defendants, Chick-fil-A is without knowledge or information sufficient to form a belief as to the truth of those allegations contained in this paragraph and therefore denies these allegations. Chick-fil-A denies any remaining allegations contained in this paragraph.

Defendant's Answers to the Patent-In-Suit:

51. Chick-fil-A admits Plaintiff has attached to its Second Amended Complaint as Exhibit A, a document entitled "Method and System for Computerized Visual Behavior Analysis, Training, and Planning" as alleged in paragraph 51 of Plaintiff's Second Amended Complaint, and that same appears to be a copy of U.S. Patent No. 6,585,516. Chick-fil-A further admits the patent states it was issued on July 1, 2003. This document speaks for itself. Chick-fil-A is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph and therefore denies these allegations. Chick-fil-A denies any remaining allegations contained in this paragraph.

52. Chick-fil-A is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of Plaintiff's Second Amended Complaint and therefore denies these allegations.

Defendant's Answers to Claim 1 – Infringement of U.S. Patent No. 6,585,516:

53. The allegations contained in paragraph 53 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

54. The allegations contained in paragraph 54 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

55. The allegations contained in paragraph 55 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

56. The allegations contained in paragraph 56 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

57. The allegations contained in paragraph 57 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

58. Chick-fil-A admits it has a website that is maintained at the web address of www.chick-fil-a.com. Chick-fil-A denies all remaining allegations contained in paragraph 58 of Plaintiff's Second Amended Complaint.

59. The allegations contained in paragraph 59 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

60. The allegations contained in paragraph 60 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

61. The allegations contained in paragraph 61 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

62. The allegations contained in paragraph 62 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

63. The allegations contained in paragraph 63 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

64. The allegations contained in paragraph 64 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

65. The allegations contained in paragraph 65 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

66. The allegations contained in paragraph 66 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

67. The allegations contained in paragraph 67 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

68. The allegations contained in paragraph 68 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

69. The allegations contained in paragraph 69 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

70. The allegations contained in paragraph 70 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

71. The allegations contained in paragraph 71 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

72. The allegations contained in paragraph 72 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

73. The allegations contained in paragraph 73 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

74. The allegations contained in paragraph 74 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

75. The allegations contained in paragraph 75 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

76. The allegations contained in paragraph 76 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

77. The allegations contained in paragraph 77 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

78. The allegations contained in paragraph 78 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

79. The allegations contained in paragraph 79 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

80. The allegations contained in paragraph 80 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

81. The allegations contained in paragraph 81 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

82. The allegations contained in paragraph 82 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

83. The allegations contained in paragraph 83 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

84. The allegations contained in paragraph 84 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

85. The allegations contained in paragraph 85 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

86. The allegations contained in paragraph 86 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

87. The allegations contained in paragraph 87 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or

information sufficient to form a belief as to the truth of same and therefore denies these allegations.

88. The allegations contained in paragraph 88 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

89. The allegations contained in paragraph 89 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

90. The allegations contained in paragraph 90 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

91. The allegations contained in paragraph 91 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

92. The allegations contained in paragraph 92 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the

extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

93. The allegations contained in paragraph 93 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

94. The allegations contained in paragraph 94 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

95. The allegations contained in paragraph 95 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

96. The allegations contained in paragraph 96 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

97. The allegations contained in paragraph 97 of Plaintiff's Second Amended Complaint do not relate to Chick-fil-A and do not require a response from Chick-fil-A. To the extent these allegations are construed to relate to Chick-fil-A, Defendant lacks knowledge or information sufficient to form a belief as to the truth of same and therefore denies these allegations.

98. As they concern Chick-fil-A, this Defendant denies all of the allegations contained in paragraph 98 of Plaintiff's Second Amended Complaint. To the extent the allegations contained in paragraph 98 relate to the other Defendants herein, such allegations do not require a response from this Defendant; to the extent a response is required, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and therefore denies these allegations.

99. Chick-fil-A is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of Plaintiff's Second Amended Complaint and therefore denies these allegations.

100. Chick-fil-A denies all of the allegations contained in Paragraph 100 of Plaintiff's Second Amended Complaint.

Defendant's Answer to Plaintiff's Demand for Jury Trial:

101. This paragraph consists of legal conclusions for which no response is required. To the extent any response is required, Chick-fil-A admits Plaintiff seeks a trial by jury of any issues triable by jury in this cause. Chick-fil-A denies there is any basis for Plaintiff's claims herein that would support a jury trial herein. Chick-fil-A denies any remaining allegations in this paragraph.

Defendant's Answer to Plaintiff's Prayer for Relief:

102. This paragraph consists of legal conclusions for which no response is required. To the extent any response is required, Chick-fil-A denies Plaintiff is entitled to the relief sought either in its prayer for relief or with regard to any of its claims. Chick-fil-A requests the Court deny all relief sought by DietGoal herein.

Defendant's Final Denial to Plaintiff's Allegations

103. To the extent any allegations remain in the Second Amended Complaint to which Chick-fil-A has not specifically responded to, admitted, or denied hereinabove, Chick-fil-A hereby denies any and all such allegations of the Complaint.

II.
DEFENDANT'S AFFIRMATIVE DEFENSES

Chick-fil-A states the following affirmative defenses to Plaintiff's Second Amended Complaint below. This case is still in the very early stages of litigation; Chick-fil-A reserves the right to amend its Answer to assert additional affirmative defenses and pleas, including instances of inequitable conduct, consistent with the evidence and facts to be developed in this case:

First Affirmative Defense:

Chick-fil-A does not infringe and has not infringed any claim of U.S. Patent No. 6,585,516 (the "516 patent") under any theory, including directly (whether individually or jointly), indirectly (whether contributorily or by inducement), literally, or under the doctrine of equivalents.

Second Affirmative Defense:

The '516 patent is invalid because the alleged invention fails to satisfy the conditions for patentability specified in 35 U.S.C. § 100 et seq., including §§ 101, 102, 103, and/or 112.

Third Affirmative Defense:

Upon information and belief, DietGoal lacks standing to sue, and/or to bring this action seeking to enforce the '516 patent.

Fourth Affirmative Defense:

The Plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted.

Fifth Affirmative Defense:

Upon information and belief, DietGoal's claims for damages for purported patent infringement are limited by 35 U.S.C. § 287.

Sixth Affirmative Defense:

To the extent DietGoal asserts Chick-fil-A indirectly infringes, either by contributory infringement or inducement of infringement, Chick-fil-A is not liable to DietGoal for the acts performed before Chick-fil-A allegedly knew its actions would cause direct infringement.

Seventh Affirmative Defense:

DietGoal's claims and its attempted enforcement of the '516 patent against Chick-fil-A are barred, in whole or in part, by laches, including but not necessarily limited to prosecution laches.

Eighth Affirmative Defense:

DietGoal's claims and its attempted enforcement of the '516 patent against Chick-fil-A are barred, in whole or in part, by estoppel, including but not necessarily limited to prosecution history estoppel.

Ninth Affirmative Defense:

DietGoal's claims and its attempted enforcement of the '516 patent against Chick-fil-A are barred, in whole or in part, by the doctrine of unclean hands.

Tenth Affirmative Defense:

By virtue of the proceedings in the United States Patent & Trademark Office during the prosecution of the application that matured into the '516 patent, as illustrated by its prosecution history, DietGoal is estopped from asserting Chick-fil-A has infringed directly or indirectly, any claim of the '516 patent, either literally or under the doctrine of equivalents.

Eleventh Affirmative Defense:

DietGoal's patent infringement claims are barred, at least in part, by the time limitation on damages, 35 U.S.C. § 286.

Twelfth Affirmative Defense:

DietGoal is barred by 35 U.S.C. § 288 from recovering costs associated with its action.

Thirteenth Affirmative Defense:

DietGoal's purported claims for damages and other relief resulting from alleged infringement of claims of the '516 patent as a result of Chick-fil-A's actions in conjunction with the actions of other parties, which Chick-fil-A specifically denies, are barred to the extent that those other parties are licensed to practice the claims of the '516 patent and/or are released from past claims of infringement of the claims of the '516 patent.

Fourteenth Affirmative Defense:

DietGoal's claims and its attempted enforcement of the '516 patent against Chick-fil-A are barred, in whole or in part, by waiver.

Fifteenth Affirmative Defense:

Upon information and belief, DietGoal has failed to plead and meet the requirements of enhanced damages or attorney's fees and costs.

Other Affirmative Defenses:

Chick-fil-A specifically pleads and incorporates by reference as an affirmative defense all additional applicable caps and limitations upon any award of damages, both compensatory and punitive, which are provided by law.

Incorporation of Co-Defendants' Pleas And Defenses

Defendant hereby incorporates by reference, to the extent applicable to Chick-fil-A, any affirmative defenses, denials or pleas raised by any other Defendant herein.

Reservation of Additional Affirmative Defenses

Chick-fil-A reserves any and all additional affirmative defenses permitted under the Federal Rules of Civil Procedure, the patent laws of the United States and/or at law or in equity, that may now exist or may exist in the future based on discovery and further investigation in this case.

III.
DEFENDANT/COUNTER-PLAINTIFF CHICK-FIL-A'S COUNTERCLAIMS

Defendant/Counter-Plaintiff hereby states and asserts the following Counterclaims against Plaintiff/Counter-Defendant DietGoal in this cause. With regard to its Counterclaims set forth below, Chick-fil-A adopts and incorporates herein by reference all of its allegations, statements, responses, defenses and pleas set forth hereinabove from all of the prior paragraphs contained in this Answer, as if fully set forth at length.

The Parties

1. Counterclaim Plaintiff Chick-fil-A is a Georgia corporation with a principal place of business located in Georgia.

2. On information and belief, and based solely on Paragraph 1 of the Second Amended Complaint as plead by DietGoal, DietGoal Innovations LLC is a Texas limited liability company based in Austin, Texas.

Jurisdiction

3. These counterclaims arise under the patent laws of the United States, Title 35, United States Code. The jurisdiction of this Court is proper under at least 35 U.S.C. § 271 et seq. and 28 U.S.C. §§ 1331, 1338, 1367, and 2201-02.

4. Venue for these counterclaims is proper in this District based on the pending action.

COUNTERCLAIM COUNT I
(Declaratory Relief Regarding Non-Infringement)

5. Based on DietGoal's filing of this action and Chick-fil-A's pleas and defenses in this cause, an actual controversy has arisen and now exists between the parties as to whether Chick-fil-A infringes the '516 patent.

6. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Chick-fil-A is entitled to and therefore requests a declaration by the Court that it has not and does not infringe any claim of the '516 patent under any theory, including directly (whether individually or jointly), indirectly (whether contributorily or by inducement), literally, or under the doctrine of equivalents.

COUNTERCLAIM COUNT II
(Declaratory Relief Regarding Invalidity)

7. Based on DietGoal's filing of this action and Chick-fil-A's pleas and defenses in this cause, an actual controversy has arisen and now exists between the parties as to the validity of the claims of the '516 patent.

8. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and 35 U.S.C. § 100 *et seq.*, Chick-fil-A is entitled to and therefore requests a declaration by the Court that the claims of the ‘516 patent are invalid.

Counterclaim Final Prayer

9. Chick-fil-A respectfully requests a judgment against DietGoal as follows:

a) A declaration that each and all of the claims of the ‘516 patent are invalid and/or unenforceable;

b) A declaration that Chick-fil-A does not infringe, under any theory, any valid claim of the ‘516 patent that is enforceable;

c) A declaration that DietGoal takes nothing by its Complaint;

d) Judgment denying DietGoal’s request for preliminary or permanent injunctive relief;

e) Final Judgment against DietGoal and in favor of Chick-fil-A;

f) Dismissal of the Plaintiff’s Complaint with prejudice;

g) An award to Chick-fil-A of its costs and attorneys’ fees incurred in this action; and;

h) Further and additional relief as the Court may deem just and proper.

Counterclaim Jury Demand

10. Chick-fil-A hereby demands trial by jury on all issues so triable.

IV.
DEFENDANT’S JURY DEMAND AS TO THE ENTIRE ACTION

Chick-fil-A respectfully requests a trial by jury on all of the claims and defenses raised herein.

V.
DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Chick-fil-A prays that upon final trial and hearing of this case, Plaintiff takes nothing on its claims, that Chick-fil-A recover on its counterclaims as set forth herein, that Chick-fil-A recover its costs, attorney's fees and any other relief to which it is entitled, and that Chick-fil-A be awarded such other and further relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

/s/ Charles K. Aris

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ATTORNEYS FOR DEFENDANT CHICK-FIL-A, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 13, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles K. Aris